IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5905 OF 2004

M/s. Nav Vikas Traders and Anr. ...Applicants.

V/s

Nilkamal Plastics Limited & Anr. ...Respondents.

Mr. C.M. Kothari for the applicants.
Smt. Prajakta Kulkarni for respondent No.1.
Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 2nd May, 2005

P.C.:

1. Applicants are challenging the order of issuance of process passed by the trial court on a complaint filed under section 138 of the Negotiable Instruments Act.

2. Brief facts are that the respondent No.1 filed a complaint against the petitioners in the court of Chief Judicial Magistrate, Dadra and Nagar Haveli, Silvassa under sections 138, 141, 142 of the Negotiable Instruments Act and under sections 406, 415, 417, 420 of the Indian Penal Code. The Chief Judicial Magistrate issued process under sections 138, 141 and 142 of the Negotiable Instruments Act only.

3. The learned Counsel appearing on behalf of

applicants submitted that there was no existing debt and liability which was due and payable to the complainant. He submitted that from the various documents which were annexed to the petition and to the complaint, it could be established that the cheque which was issued was not towards any existing debt or liability but was issued as a security towards the goods which were supplied by the complainant. The learned Counsel in support of the said submission invited my attention to clause 14 of the agreement between the parties in which it was stated that the buyer shall keep with the Company signed cheques and that the Company had right to complete the said cheques so deposited with the price as per the invoice as soon as the goods ordered for are despatched. It is further submitted that the further correspondence clearly demonstrated that this practice of giving signed cheques was discontinued and the Company had demanded drafts in place of the signed cheques. It is submitted that this clearly shows that the cheques which were in possession of the complainant were misused and the amount was subsequently filled-up though the said amount was not due and payable. The learned counsel invited my attention to the various correspondence between the parties in support of the said submission. It is submitted that the complaint

which was filed in the Court of Chief Judicial Magistrate was malafide and the process which was issued was without any application of mind.

4. The learned Counsel appearing on behalf of respondent No.1, on the other hand, submitted and relied upon various documents to show that the cheques which were deposited were towards the existing debt and liability.

5. It will not be possible to accept the submissions made by the learned Counsel appearing on behalf of the applicants. The question whether there was an existing debt or liability is a question of fact which can be decided only after the evidence is adduced by the complainant and presumption which is raised under section 139 is rebutted by the accused. The High Court while exercising its jurisdiction under section 482 cannot arrive at any finding on a disputed question of fact.

6. Thus, the Criminal Application is dismissed. Hearing of the trial is expedited. If an application for exemption is made by the applicants the same may be considered sympathetically and the presence of the applicants shall not be insisted upon on each and

every day by the Magistrate unless the same is absolutely necessary.

7. Criminal Application is disposed of in the above terms.

V.M. KANADE, J.